

## **BANKRUPTCY PREFERENCES AND ACTIONS – 11 U.S.C. 547**

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### **I. Elements**

- A. Transfer of an interest of Debtor in property
- B. Made to or for benefit of Creditor
- C. In payment of antecedent debt
- D. Made within 90 days prior to bankruptcy filing – or within 1 year for transfers to insiders
- E. Made while Debtor was insolvent
- F. That enables Creditor to receive more than in chapter 7 liquidation

### **II. Common Defenses**

- A. Contemporaneous exchange for new value:
  - 1) Intended to be contemporaneous exchange and
  - 2) In fact substantially contemporaneous
- B. Subsequent new value
- C. Ordinary course of business – transfer was:
  - 1) Payment of debt incurred by debtor in ordinary course of business of Debtor and transferee, and either:
    - a) Made in ordinary course of business of Debtor and transferee, or
    - b) Made according to ordinary business terms
- D. Purchase-money security interest perfected within 30 days of possession
- E. Pass Through
- F. Earmarking